

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6039L

v.

JERMAINE SMOKES,

Defendant.

By motion filed December 17, 2010 (Dkt. #27), the defendant moves, *pro se*, to reduce the 97 month sentence imposed by this Court on June 25, 2008. Defendant relies on an amendment to the Sentencing Guidelines, effective November 1, 2010, pursuant to the Fair Sentencing Act of 2010.

The motion is in all respects denied. The statute does not provide for its retroactive application and the United States Court of Appeals for the Second Circuit has held that defendants, such as Smokes, who committed their offense prior to enactment of the statute are not entitled to its benefits. *United States v. Baldwin*, 2010 WL 4250060 (2d Cir., October 27, 2010). Therefore, because the Act does not apply retroactively, defendant's motion must be denied.

CONCLUSION

Defendant's motion (Dkt. #27) to reduce his previously imposed sentence is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 5, 2011.